IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2802 of 2004
To
FIRST APPEAL No. 2819 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FULABHAI KOYABHAI - Appellant(s)
Versus
SPL. LAQ OFFICER & 2 - Defendant(s)

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Appearance :
MR YATIN SONI for Appellant(s) : 1,MR HITESH B PATEL for Appellant(s) : 1,
MR SUNIT SHAH GP for Defendant(s) : 1 in FIRST APPEAL NOS. 2802/04 TO 2810/04.
MS KRINA CALLA AGP for Defendant(s):1 in FIRST APPEAL NOS. 2811/04 TO 2819/04
RULE SERVED for Defendant(s) : 2

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 02/04/2007

ORAL JUDGMENT

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the claimant/claimants claim/claims that the additional amount of compensation awarded to him/them at the rate of Rs.23/- per sq.mt. for their acquired lands over and above the amount of compensation offered to him/them at the rate of Rs.23/- per sq.mt. by the Special Land Officer by his award dated October 3, 1998 is inadequate and that they should be further awarded compensation at the rate of Rs.23/- per sq.mt.

2. A proposal was received by the State Government to acquire the lands of village Matoda, Taluka:Sanand, District:Ahmedabad for the public purpose of construction of a road between village Matoda and village Modasar of Sanand Taluka. On

perusal of the same, the State Government was satisfied that the lands of village Matoda were likely to be needed for said public purpose. It may be mentioned that possession of the lands needed for the said public purpose was taken over in the year 1972-73 but notification under Section 4(1) of the Act was issued which was published in the Official Gazette on February 1, 1996. Thereafter necessary inquiry under Section 5 of the Act was made and a report under Section 5 A (2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report the State Government was satisfied that the lands specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of a road between the village Matoda and Modasar. Therefore, a declaration under Section 6 of the Act was made which was published for the Official Gazette on September 19, 1997. The interested persons were thereafter served with notices for determining the amount of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed

compensation at the rate of Rs.200/- per sq.mt. However, having regard to the materials placed before him the Special Land Acquisition Officer by his award dated October 3, 1998 offered compensation to the claimants at the rate of Rs.23/- per sq.mt. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for determination of this amount of compensation payable to them. Accordingly, references were made to District Court (R) at Ahmedabad where they were registered as Land Acquisition Case Nos.255/2000 to 273/2000.

3. On behalf of the claimants witness Mavjibhai Ramjibhai was examined at Exh.48. The witness mentioned before the Court that the lands acquired were highly fertile and that his village Matoda was fully developed. The witness stated before the Court that village Sanand was situated at a distance of 4 to 5 kilometers from his village Matoda. After

stating so the witness claimed before the Court that the lands of village Sanand were also acquired for public purpose and the Reference Court had awarded additional amount of compensation to the claimants at the rate of Rs.65/- per sq.mt. over and above compensation awarded at the rate of Rs.5 per sq.mt. by the Special Land Acquisition Officer. In support of this assertion the witness produced previous award of the Reference Court relating to the lands of village Sanand at Exh.43 and claimed that the claimants were entitled to enhanced compensation on the basis of the said award. The witness furher stated that, feeling aggrieved the claimants had approached the High Court and the High Court in F.A. Nos.3892/98 to 3896/98 had enhanced compensation payable to the claimants at the rate of Rs.90/- per sq.mt. by judgment dated September 29, 1998 and asserted that claimants in the instant cases were entitled to enhanced compensation on the basis of the said previous award of the Reference Court as modified by the High Court.

4. In his cross-examination by the learned counsel

for the acquiring authorities a suggestion was made to the witness that the distance between village Sanand and his village Matoda was about 15 kilometers but the said suggestion was denied by him.

5. It may be mentioned that on behalf of the acquiring authorities no witness was examined. The Reference Court on appreciation of evidence held that the actual distance between the village Matoda and Sanand was not proved by either of the parties. The Reference Court concluded that the lands surrounding the lands acquired were purchased by some of the factory owners at the maximum rate of Rs.25/- per sq.mt. and, therefore, on the basis of previous award of the Reference Court relating to the lands of village Sanand as modified by the High Court the claimants were entitled to additional amount of compensation at the rate of Rs.23/- per sq.mt. In the ultimate analysis the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.23/- per sq.mt. by the impugned award giving rise to the above numbered appeals.

6. This Court has heard Mr.Yatin Soni and Mr.Hitesh B.Patel, learned counsel for the appellants and Mr.Sunit S. Shah learned Government Pleader for the respondents at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence passed by the parties before the Reference Court.

7. It may be mentioned that the common judgment and award dated January 6, 2003 rendered by the learned Civil Judge Senior Division, Ahmedabad Rural in Land Acquisition Case Nos.255/2000 to 273/2000 which is subject matter of challenge in the instant appeals was also challenged by the acquiring authorities in First Appeal (Stamp) Nos. 3305/03 to 3323/03. Those appeals were time barred and, therefore, Civil Application Nos. 6580/04 to 6598/04 were filed for condonation of delay. The applications were listed for hearing before the Division Bench and the Division Bench by order dated May 10, 2005 rejected those applications by holding that the delay of 179 days caused in filing the appeals was not

satisfactorily explained. While disposing of those applications, it was *inter alia* observed by the Division Bench that there was some substance in the submission made by Mr.Gori, learned Assistant Government Pleader for the applicants in all those appeals that on facts of the case, the Reference Court should not have awarded additional sum of Rs.23/- per sq.mt. However, after having held so, a rider was provided by the Division Bench by observing that the apprehension expressed by the learned Assistant Government Pleader that the Court had expressed opinion either on the legality or validity of the impugned judgment and award was not well founded. Thus, it is obvious that the order dated May 10, 2005 rendered in Civil Application Nos. 6580/04 to 6598/04 cannot be construed as expression of the Division Bench on merits of the case and, therefore, would not affect either the appellants or the respondents, obviously, because the Division Bench was essentially concerned with the question whether delay caused in filing those appeals was satisfactorily explained or not. From the impugned award it becomes evident that the relevancy of the

previous award of the Reference Court relating to the lands of village Sanand could not be established by the parties by leading cogent evidence. The conclusion reached by the Reference Court on facts is neither warranted nor justifiable nor the Reference Court has taken into consideration settled legal principles of law in determining compensation payable to the appellants. On re-apprehension of the evidence adduced by the parties, this court is of the opinion that the award impugned in the appeals is wholly unsustainable. On the facts and in the circumstances of the case, the Court is of the opinion that the Reference Court should have determined the compensation on the basis of legal, valid, reliable and acceptable relevant evidence and not on the basis of imagination. To say the least, the award of the Reference Court is based on whims and is arbitrary and, therefore, has got vitiated. Mr.Yatin Soni and Mr.Hitesh Patel, learned counsels for the appellants have produced typed notes of the case dated April 2, 2007 in which the Court is requested to remand all the matters to the Reference Court for fresh decision in accordance with law after

giving opportunity to the parties to lead further evidence. The notes produced are ordered to be taken on record of the case. Mr.S.S.Shah, learned Government Pleader on instructions states that the acquiring authorities are agreeable to the suggestion made by the learned counsels for the appellants to remand the matter to the Reference Court and prays that liberty be reserved to the parties to lead fresh evidence in the case. In view of the agreement arrived at between the learned counsels for the parties and the deficiency in the impugned award which have been noticed earlier this Court is of the opinion that interest of justice would be served if the matters are remanded to the Reference Court with a direction to decide the same in accordance with law and the parties are reserved liberty to lead fresh evidence in support of their respective cases.

8. For the foregoing reasons all the appeals succeed. The common judgment and award dated January 6, 2003 rendered by the learned Civil Judge Sr.Division, Ahmedabad Rurual in Land Acquisition Case Nos.255/2000 to 273/2000 is hereby set aside.

The matters are remitted to the Reference Court for deciding the same afresh. The parties would be at liberty to lead fresh evidence in support of their respective cases. The Reference Court is directed to decide the references in accordance with law and in the light of the evidence which may be adduced by the parties without being influenced by order dated May 10, 2005 rendered in Civil Applications Nos. 6580/04 to 6598/04. Since these proceedings pertain to the acquisition of lands initiated in the year 1996, the Reference Court is directed to dispose of the references as expeditiously as possible and without any delay. The appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs. The registry is directed to transmit the record of the case, if received, to the Reference Court forthwith.

[J.M.Panchal, J.]

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